IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Lee-Yin Chee, Kheng Guan (Nigel) Tan, Sie-Boo Chiang		
Assignee:	GlobalFoundries Inc.		
Title:	Method of Generating Packets Without Repetition in Verification of a Device		
Serial No.:	10/791,914	Filing Date:	March 3, 2004
Examiner:	Kenan Cehic	Group Art Unit:	2473
Docket No.:	SE0044	Customer No.:	53362

Filed Electronically October 25, 2010

APPEAL BRIEF UNDER 37 CFR § 41.37

Dear Sir:

Applicants submit this Appeal Brief pursuant to the Notice of Appeal filed in this case on June 22, 2010, and the Notice of Panel Decision from Pre-Appeal Brief Review dated September 23, 2010. The fee for this Appeal Brief is being paid electronically via the USPTO EFS. The Board is authorized to deduct any other amounts required for this appeal brief and to credit any amounts overpaid to Deposit Account No. 502264.

I. REAL PARTY IN INTEREST - 37 CFR § 41.37(c)(1)(i)

The real party in interest is the assignee, GlobalFoundries Inc., as named in the caption above and as evidenced by the assignment set forth at Reel 023120, Frame 0426.

II. RELATED APPEALS AND INTERFERENCES - 37 CFR § 41.37(c)(1)(ii)

Based on information and belief, there are no appeals or interferences that could directly affect or be directly affected by or have a bearing on the decision by the Board of Patent Appeals and Interferences in the pending appeal. However, Applicants would note that the present case was previously appealed in a Notice of Appeal dated August 28, 2008, and in another Notice of Appeal dated May 22, 2009. In both cases, prosecution was reopened.

III. STATUS OF CLAIMS - 37 CFR § 41.37(c)(1)(iii)

Claim 1 has been cancelled. Claims 2-6 are pending in the application. Claims 2-6 stand rejected. The rejection of claims 2-6 is appealed. Appendix "A" contains the full set of pending claims.

IV. STATUS OF AMENDMENTS - 37 CFR § 41.37(c)(1)(iv)

On May 25, 2010, Applicants filed an Amendment and Response to Final Office Action proposing amendments to independent claims 2-5 to clarify that "a single flag" is used for each packet class, but the proposed amendments were not entered by the Advisory Action dated June 16, 2010.

V. SUMMARY OF CLAIMED SUBJECT MATTER - 37 CFR § 41.37(c)(1)(v)

Applicants have invented a device verification method which provides a single dual-state flag for each of a plurality of packet classes. As recited, the single flag can have either a first state (e.g., "0" to indicate that the packet class has not been tested) or a second state (e.g., "1" to indicate that the packet class has been tested). *It bears emphasis that the claims singularly and consistently recite "the flag" with reference to the earlier recitation of "a flag" which provides the antecedent basis for the recited single flag.* When a packet from a packet class is generated, the single flag for that packet class is checked to see if it is in a first state, and if so, that packet is used to test the device for that packet class and the flag is changed to the second state. *See, e.g.*, claim 2. On the other hand, if the single flag for that packet class is in a second state, the packet is not used to test the device for that packet class. *See, e.g.*, claim 3. **In this way, a device is tested *by packet class* since a packet within each packet class will only be used to test the device if the flag for that packet class has not been set to the second state.** With Applicants' invention, packets need not be stored in memory, but can instead be "generated" as claimed (e.g., randomly), and each generated packet in a given packet class can be checked against the flag for that packet class to determine if the packet will be used to test the device. This approach eliminates the costs associated with storing all possible packets to be tested, and also eliminates the inefficient testing of devices with redundant packets by using a single flag for each packet class to determine if a generated packet in the packet class will be used to test the device.

The subject matter defined in independent claim 2 (specification, page 2, line 1 to page 4, line 20 and page 7, lines 1-18) may be understood with reference to the example embodiment depicted in Figure 1 which depicts an exemplary flow diagram of a method for use in device verification. In the method, a plurality of packet classes are provided, and for each of the plurality of packet classes, a flag is provided which may be of a first or a second state. *See*, Figure 1 ("PROVIDE 1-BIT INJECTION FLAG ... FOR EACH LEGAL PACKET CLASS"). Subsequently, a packet is generated. *See*, Figure 1 ("GENERATE PACKET"). If the flag of the packet class of the generated packet is in the first state, the device is tested and the flag of the packet

class of the generated packet is changed to the second state. *See*, Figure 1 ("RUN TEST" and "SET INJECTION FLAG OF THAT PACKET CLASS TO = 1"). Thus, the method for use in verification of a device recited in independent claim 2 (specification, page 2, lines 32-35, page 3, page 4, lines 1-12) includes providing a plurality of packet classes (10), providing a flag, which may be of a first or a second state, for each of the plurality of packet classes (10), and generating a packet (12); if the flag of the packet class of the generated packet is in the first state, testing the device (14, 16); if the flag of the packet class of the generated packet is in the first state, changing the flag of the packet class of the generated packet to the second state (14, 18).

The subject matter defined in independent claim 2 (specification, page 2, line 1 to page 4, line 20 and page 7, lines 1-18) may be understood with reference to the example embodiment depicted in Figure 1 which depicts an exemplary flow diagram of a method for use in device verification. In the method, a plurality of packet classes are provided, and for each of the plurality of packet classes, a flag is provided which may be of a first or a second state. *See*, Figure 1 ("PROVIDE 1-BIT INJECTION FLAG ... FOR EACH LEGAL PACKET CLASS"). Subsequently, a packet is generated. *See*, Figure 1 ("GENERATE PACKET"). If the flag of the packet class of the generated packet is in the first state, the device is tested. *See*, Figure 1 ("RUN TEST" if injection flag of packet class does not equal 1). However, the flag of the packet class of the generated packet is in the second state, the device is not tested. *See*, Figure 1 (Return to "GENERATE PACKET" without running test if injection flag of packet class equals 1). Thus, the method for use in verification of a device recited in independent claim 3 (specification, page 2, lines 32-35, page 3, page 4, lines 1-12) includes providing a plurality of packet classes (10), providing a flag, which may be of a first or a second state, for each of the plurality of packet classes (10), and generating a packet (l2); if the flag of the packet class of the generated packet is in the first state, testing the device (14, 16); if the flag of the packet class of the generated packet is in the second state, not testing the device (14, 12).

The subject matter defined in independent claim 4 (specification, page 2, line 1 to page 4, line 20 and page 7, lines 1-18) may be understood with reference to the example embodiment depicted in Figure 1 which depicts an exemplary flow diagram of a method for use in device verification. In the method, a plurality of packet classes are provided, and for each of the plurality of packet classes, a flag is provided which may be of a first or a second state. *See*, Figure 1 ("PROVIDE 1-BIT INJECTION FLAG ... FOR EACH LEGAL PACKET CLASS"). Subsequently, a packet is generated. *See*, Figure 1 ("GENERATE PACKET"). If the flag of the

packet class of the generated packet is in the second state, the device is not tested. *See*, Figure 1 (Return to "GENERATE PACKET" without running test if injection flag of packet class equals 1). Thus, the method for use in verification of a device recited in independent claim 4 (specification, page 2, lines 32-35, page 3, page 4, lines 1-12) includes providing a plurality of packet classes (10), providing a flag, which may be of a first or a second state, for each of the plurality of packet classes (10), and generating a packet'(12); if the flag of the packet class of the generated packet is in the second state, not testing the device (14, 12).

The subject matter defined in independent claim 5 (specification, page 2, line 1 to page 4, line 20 and page 7, lines 1-18) may be understood with reference to the example embodiment depicted in Figure 1 which depicts an exemplary flow diagram of a method for use in device verification. In the method, a plurality of packet classes are provided, and for each of the plurality of packet classes, an injection flag is provided which may be of a first or a second state. *See*, Figure 1 ("PROVIDE 1-BIT INJECTION FLAG ... FOR EACH LEGAL PACKET CLASS"). Subsequently, a packet is generated. *See*, Figure 1 ("GENERATE PACKET"). If the injection flag of the packet class of the generated packet is in the second state, the device is not tested. *See*, Figure 1 (Return to "GENERATE PACKET" without running test if injection flag of packet class equals 1). However, if the injection flag of the packet class of the generated packet is in the first state, the device is tested. *See*, Figure 1 ("RUN TEST" if injection flag of packet class does not equal 1). Thus, the method for use in verification of a device recited in independent claim 5 (specification, page 2, lines 32-35, page 3, page 4, lines 1-12) includes (a) providing a plurality of packet classes (10), (b) providing an injection flag, which may be of a first or a second state, for each of the plurality of packet classes (10), and (c) generating a packet (12); (d) if the injection flag of the packet class of the generated packet is in the second state, not testing the device (14, 12); (e) if the injection flag of the packet class of the generated packet is in the first state, testing the device and setting the injection flag of the packet class of the generated packet to the second state (14, 16, 18).

As seen from the foregoing, the subject matter of the independent claims is set forth in the Application at Figure 1 and the related discussion in the specification at page 2, line 1 to page 4, line 20 and page 7, lines 1-18, though additional contextual description is provided in the application and claims section. While Applicants have identified passages from the specification to explain the independent claim subject matter, it will be appreciated that the referenced description

includes contextual information to provide an overall context for an example embodiments, and therefore should not be used to improperly read limitations from the specification into the claims.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 2-6 were finally rejected as obvious over U.S. Patent Publication No. 2003/0172177 to Kersley et al. in view of U.S. Patent Publication No. 2002/0190356 to Buechler et al. as evidenced by English, ADA 95: The Craft of Object-Oriented Programming. In this appeal, Applicants appeal the obviousness rejection of claims 2-6 over Kersley, Buechler, and English.

VII. ARGUMENTS

For the reasons set forth more fully below, Applicant respectfully requests that the rejection be reversed and that the claims be allowed because the Examiner has *mischaracterized* and *overstated* the claims in ignoring the clear and plain requirement that a single, two-state flag is used for each packet class to determine if the packet class is used to test the device. Based on the *mischaracterized* and *overstated* claim scope, the Examiner incorrectly asserts that Buechler's use of "record flags" to assure that all required assay tests are performed meets the claim requirements for a two-state injection flag, when in fact Buechler actually discloses using two separate flags instead of a single, two-state. Correctly construed and applied, Applicant submits that none of the cited references, either taken singly or in combination, disclose or suggest Applicant's claimed device verification method.

A. Claims 2-6 Are Not Obvious Over Kersley, Buechler, and English

As explained above, Applicants have invented a device verification method which provides a single dual-state flag for each of a plurality of packet classes. *See, e.g.*, claim 2 ("providing a flag, which may be of a first or a second state, for each of the plurality of packet classes."). As recited, the single flag can have either a first state (e.g., "0" to indicate that the packet class has not been tested) or a second state (e.g., "1" to indicate that the packet class has been tested). *It bears emphasis that the claims singularly and consistently recite "a flag" or "the flag" with reference to the earlier recitation of "a flag" which provides the antecedent basis for the recited single flag.* When a packet from a packet class is generated, the single flag for that packet class is checked to see if it is in a first state, and if so, that packet is used to test the device for that packet class and the flag is changed to the second state. *See, e.g.*, claim 2. On the other hand, if the single flag for that packet class is in a second state, the packet is not used to test the device for that packet class. *See, e.g.*, claim 3. **In this way, a device is tested *by packet class* since a packet within each packet class will only be used to test the device if the flag for that packet class has not been set to the**

second state. With Applicants' invention, packets need not be stored in memory, but can instead be "generated" as claimed (e.g., randomly), and each generated packet in a given packet class can be checked against the flag for that packet class to determine if the packet will be used to test the device. This approach eliminates the costs associated with storing all possible packets to be tested, and also eliminates the inefficient testing of devices with redundant packets by using a single flag for each packet class to determine if a generated packet in the packet class will be used to test the device.

In rejecting claims 2-6 as obvious over Kersley, Buechler and English, the Examiner asserts that Kersley's disclosed method for verification of a device-under-test (Kersley, Fig. 2, ¶¶ 5-7, 18, 21-22, 35, and 43) meets the claim requirements except for variously recited requirements of (1) "providing a flag, which may be of a first or a second state, for each of the plurality of packet classes" (claims 2-6); (2) testing the device "if the flag of the packet class of the generated packet is in the first state" (claims 2-3 and 5-6); (3) not testing the device "if the flag of the packet class of the generated packet is in the second state" (claims 3-6); and (4) "changing the flag of the packet class of the generated packet to the second state" if the flag of the packet class of the generated packet is in the first state (claims 2 and 5-6). *See*, Office Action, pp. 2-6. To overcome these deficiencies in Kersley's disclosure, the Examiner cites Buechler's disclosure (Buechler, ¶ 78) of using "record flags" to assure that all required assay tests are performed and to avoid duplication of testing. Id., pp. 6-8. In reply and as explained more fully below, Applicants respectfully submit that a *prima facie* case of obviousness has not been established because the Examiner has failed to establish any of the three basic criteria required to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference as proposed by the Examiner. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to modify the reference and the reasonable expectation of success must both be found in the prior art, not in Applicants' disclosure. MPEP §§ 2143.01-03.

The *prima facie* case fails because the cited art fails to teach or suggest all the claim limitations. *See*, MPEP §§ 2143.03 ("All words in a claim must be considered in judging the patentability of that claim against the prior art."). In particular, Applicants submit that there are numerous deficiencies in the rejection analysis. First of all, the Examiner's rejection analysis does not recognize that a single flag is used for each packet class to convey the test status of the packet

class, asserting that "the claims does (sic, do) not explicitly state 'a **single** flag', but merely 'a flag'. This claimed language does not exclude the possibility of having multiple flags for a packet class, but merely states that there is a flag for a packet class." *See*, Office Action, pp. 8-9 (emphasis in original). As a result, the Examiner (incorrectly) asserts that Buechler's two separate flags meet the claim limitation of "a flag." Id.

In reply, Applicants respectfully submit that the Examiner's proposed interpretation and application of the claims is incorrect because it fails to take into account the clear and explicit claim requirements that there is "a flag" with two states, that the device is tested with a packet if "the flag" is in a first state, and that "the flag" is changed to the second state if "the flag" is in the first state. The singular nature of "the flag" recited in the claims follows directly from the claim formatting requirements for reciting an antecedent basis for the claimed "flag" limitation, and Applicants submit that persons having ordinary skill in the art would readily understand as much from the recited language. Applicants proposed reading of the claims is consistent, not only with the explicit requirements of "the flag" in claims, but also with the intrinsic evidence:

> In the present method for use in verification of a device, a plurality of injection flags are provided, with one each of which is associated of a plurality of packet classes. Each injection flag may be of a first or a second state. Next, a packet is generated. If the injection flag of the packet class of the generated packet is in the second state, it is indicated that a packet of that packet class has already been generated, and the device is not tested. If the injection flag of the packet class of the generated packet is in the first state, the device is tested and the injection flag of the packet class of the generated packet is set to the second state.
>
> * * *
>
> Figure 1 illustrates the steps of the present invention. In the present simulation, initially, each legal packet class is provided with a 1-bit injection flag.

See, Application, p. 2, lines 1-9 and 32-33. As these passages show, Applicants have disclosed and claimed using a single flag for each packet class to drive and determine these various actions (test, not test, change flag state). In contrast, the cited art explicitly discloses using a plurality of record flags to track tests and prevent duplication. *See*, Buechler, ¶ 78 ("In order to assure that all required tests are performed, and also to avoid duplication of testing, record **flags** or other techniques can be used when the database 464 is accessed to retrieve test instructions. For example, when fluorometer 100 accesses information system 408 to receive instructions for a particular test, that test is flagged as being performed such that subsequent accesses by this or another fluorometer 100 will not retrieve the same test instructions. Once a test is completed and the results provided to information system 408, **another flag** can be set indicating the status of the test as being completed.") (emphasis

added). Thus, Applicants' approach is more efficient than the cited art because Applicants use a single flag to convey test status information for each packet, while the cite art uses multiple record flags to track tests and prevent duplicate testing.

In this case, the rejection analysis appears to have mischaracterized the claimed invention by ignoring the requirement that a single flag be used for each packet class to determine:

> (1) whether the device is tested with the generated packet (as variously required in claims 2-3 and 5-6 which require device testing "if the flag of the packet class of the generated packet is in the first state");
> (2) whether the device is *not* tested with the generated packet (as variously required in claims 3-6 which require no device testing "if the flag of the packet class of the generated packet is in the second state"); and/or
> (3) whether the flag is changed to a second state (as variously required in claims 2 and 5-6 which require changing the flag state if the flag of the packet class of the generated packet is in the first state").

See, e.g., claims 2-5. In short, Applicants have disclosed and claimed using a single flag for each packet class to drive and determine these various actions (test, not test, change flag state).

Against this backdrop, Applicants urge reconsideration and withdrawal of the rejection over Kersley, Buechler and English because the proposed combination fails to disclose or address the variously recited requirements in claims 2-3 and 5-6 of testing the device "if the flag of the packet class of the generated packet is in the first state" since Buechler discloses accessing the test instructions without first checking the state of an associated flag for the test. Likewise, rather than meeting the variously recited requirements in claims 3-6 of not testing the device "if the flag of the packet class of the generated packet is in the second state," Buechler discloses accessing "another flag" (not the same flag) to see if the test has been completed. Finally, rather than meeting the variously recited requirements in claims 2 and 5-6 of changing the flag to the second state "if the flag of the packet class of the generated packet is in the first state," Buechler discloses setting "another flag can be set" (not the same flag) "[o]nce a test is completed and the results provided to information system 408." In sum, Buechler uses two flags, not one flag as claimed, and sets the flags in response to different triggers than claimed. Buechler's use of multiple flags for each test should come as no surprise since Buechler's fluorometer testing scheme is concerned with only a limited number of tests, so there would be no significant penalty in tracking multiple flags for each test. In contrast, Applicants' disclosed verification scheme is being used to test devices with "several thousand different combinations" of possible packet classes being tested. *See*, Application, p. 1, lines 20-21.

Another problem with the cited art is that neither Kersley nor Buechler disclose or suggest "providing a plurality of packet classes," much less "providing a flag ... for each of the plurality of packet classes" as recited in each of the pending claims. On this point, Applicants have carefully review the cited disclosure from Kersley (Fig. 2, ¶¶ 5-7, 18, 21-22, 35, 43), but there is absolutely no teaching or suggestion of any "packet class," much less of providing a single flag for each "packet class." And while Buechler discloses maintaining a flag for each assay test performed by the fluorometer, there is no suggestion of maintaining a flag for a class of tests. Thus, there is simply no teaching or suggestion that the cited art combination provides "a plurality of packet classes" with a (single) flag "for each of the plurality of packet classes," as recited in the claims. Instead of being concerned with testing by packet class, Kersley is concerned with verifying a device-under-test by "generating packets to simulate complex network packet traffic patterns to test and verify a device under test (DUT)." Kersley, paragraph 5.

In addition to the missing claim requirements detailed above, the *prima facie* case fails because the Examiner has provided **zero** evidence of any suggestion or motivation to combine the Kersley, Buechler and English references. *See*, MPEP § 2143.01 ("Suggestion or Motivation to Modify the References" is required.). This deficiency is seen from the Examiner's rejection analysis of claim 2 where the Examiner admits that Kersley fails to disclose the claim requirements for providing a two-state flag for each of the plurality of test types and changing the flag to the second state if the flag is in the first state, but then proceeds to assert, without support, that it would have been obvious to combine Buechler's description of using "records flags… test…flagged…flag…test as being completed." *See*, Office Action, pp. 5-6. The proffered motivation-to-combine evidence consists of the unsupported assertion that:

> It would have been obvious to one of the (sic) ordinary skill in the art at the time of the invention to modify / combine the features of Kersley by using the above recited features, as taught by Beuchler, or order to provide a method a (sic) preventing duplicate testing, thus decreasing wasteful testing time and additional resources used by not performing tests that already have been performed (see Beuchler sections 0078). One could have implemented the teaching of Beuchler to the concept of test packets of Kersley, where flags are kept for the different packet types / combination.

See, Office Action, p. 8. To the extent that the purported objective of "preventing duplicate testing" could be achieved by Beuchler's plurality of record flags for each, the proffered motivation-to-combine evidence is wholly devoid of any explanation of how a person skilled in the art would be motivated by Beuchler's disclosure to meet the requirements recited in the claims for using a single,

two-state to keep track of which packets have been tested on the device. *See*, DyStar Textilfarben GMBH v. C. H. Patrick Co., 464 F.3d 1356, 80 USPQ2d 1641 (Fed. Cir. 2006) ("'[C]onclusory statements such as those here provided do not fulfill the agency's obligation' to explain all material facts relating to a motivation to combine.... We instructed that assumptions about common sense cannot substitute for evidence thereof..."). This wholly unsupported assertion does not meet the requirement of a *prima facie* showing of obviousness announced in the recent KSR decision whereby the Examiner must provide "some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness" and must "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does." KSR v. Teleflex, 127 S. Ct. 1727, 82 U.S.P.Q.2d 1385 (2007). In addition, the Examiner must make "explicit" this rationale of "the apparent reason to combine the known elements in the fashion claimed," including a detailed explanation of "the effects of demands known to the design community or present in the marketplace" and "the background knowledge possessed by a person having ordinary skill in the art." Id. Anything less than such an explicit analysis does not meet the requirement of a *prima facie* case of obviousness. Indeed, the attempted reliance on Buechler to remedy Kersley's admitted deficiencies actually teaches away from Applicant's claimed invention since Belcher explicitly discloses using a plurality of record flags for each assay test to track tests and prevent duplication. *See*, Buechler, ¶ 78 ("In order to assure that all required tests are performed, and also to avoid duplication of testing, record **flags** or other techniques can be used when the database 464 is accessed to retrieve test instructions. For example, when fluorometer 100 accesses information system 408 to receive instructions for a particular test, that test is flagged as being performed such that subsequent accesses by this or another fluorometer 100 will not retrieve the same test instructions. Once a test is completed and the results provided to information system 408, **another flag** can be set indicating the status of the test as being completed.") (emphasis added). *See*, MPEP § 2144.05(III) ("A prima facie case of obviousness may also be rebutted by showing that the art, in any material respect, teaches away from the claimed invention. In re Geisler, 116 F.3d 1465, 1471, 43 USPQ2d 1362, 1366 (Fed. Cir. 1997)"). KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385, 1395 (2007) ("When the prior art teaches away from combining certain known elements, discovery of successful means of combining them is more likely to be nonobvious."). Where there is no suggestion to combine the teachings and suggestions of Kersley and Beuchler as advanced by the Examiner, this appears to be an improper use of Applicants' invention as a template through hindsight reconstruction of Applicants' claims. *See*, Ex

Parte Crawford et al., Appeal No. 20062429 (BPAI 2007) and Ex Parte Erkey et al, Appeal 20071375 (BPAI May 11, 2007) (reversing rejection of claim as obvious where Examiner failed to provide sufficient evidence and explicit analysis of why the disclosures of the references should be combined.).

Finally, the *prima facie* case fails because the Examiner has failed to articulate a finding that there was a reasonable expectation of success. *See*, MPEP §§ 2143.02 ("Reasonable Expectation of Success Is Required"). The rejection analysis set forth in the Office Action is entirely silent on the question of whether there is a reasonable expectation of success, as there is rationale provided to support the assertion that the claimed invention would have been obvious. *See*, Office Action, pp. 2-11.

Based on the foregoing, Applicants submit that a *prima facie* case of obviousness has not been established for claims 2-6 because the Examiner has not met the burden of showing that all the claim limitations are taught or suggested by the prior art. In the absence of any disclosure by the cited art references of a device verification method which provides a single flag for each of a plurality of packet classes for purposes of performing device verification testing on each packet, the Examiner has not made the *prima facie* showing that each and every element of the claimed invention, arranged as required by the claims, is found in the cited art. When determining whether a claim is obvious, an Examiner must make "a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art." In re Ochiai, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). Thus, "obviousness requires a suggestion of all limitations in a claim." CFMT, Inc. v. Yieldup Intern. Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003) (*citing* In re Royka, 490 F.2d 981, 985 (CCPA 1974)). Moreover, the Supreme Court has made clear that "*there must be some articulated reasoning* with some rational underpinning to support the legal conclusion of obviousness." KSR Int'l v. Teleflex Inc., 127 S.Ct. 1727, 1741 (2007) (*quoting* In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006) (emphasis added)). Accordingly, Applicants respectfully request that the obviousness rejection of claims 2-6 be reconsidered and withdrawn, and that the claims be allowed.

VIII. CLAIMS APPENDIX - 37 CFR § 41.37(c)(1)(viii)

A copy of the pending claims involved in the appeal is attached as Appendix "A."

IX. EVIDENCE APPENDIX - 37 CFR § 41.37(c)(1)(ix)

None.

X. RELATED PROCEEDINGS APPENDIX - 37 CFR § 41.37(c)(1)(x)

There are no related proceedings.

XI. CONCLUSION

In view of the above arguments, it is respectfully urged that the rejection of the claims should not be sustained.

CERTIFICATE OF TRANSMISSION

I hereby certify that on October 25, 2010, this correspondence is being transmitted via the U.S. Patent & Trademark Office's electronic filing system.

/Michael Rocco Cannatti/

Respectfully submitted,

/Michael Rocco Cannatti/

Michael Rocco Cannatti
Attorney for Applicants
Reg. No. 34,791

APPENDIX A - PENDING CLAIMS

1. (Canceled)

2. (Previously Presented) A method for use in verification of a device comprising:

providing a plurality of packet classes;

providing a flag, which may be of a first or a second state, for each of the plurality of packet classes;

generating a packet;

if the flag of the packet class of the generated packet is in the first state, testing the device;

if the flag of the packet class of the generated packet is in the first state, changing the flag of the packet class of the generated packet to the second state.

3. (Previously Presented) A method for use in verification of a device comprising:

providing a plurality of packet classes;

providing a flag, which may be of a first or a second state, for each of the plurality of packet classes;

generating a packet;

if the flag of the packet class of the generated packet is in the first state, testing the device;

if the flag of the packet class of the generated packet is in the second state, not testing the device.

4. (Original) A method for use in verification of a device comprising:

providing a plurality of packet classes;

providing a flag, which may be of a first or a second state, for each of the plurality of packet classes;

generating a packet;

if the flag of the packet class of the generated packet is in the second state, not testing the device.

5. (Original) A method for use in verification of a device comprising: (a) providing a plurality of packet classes;

(b) providing an injection flag, which may be of a first or a second state, for each of the plurality of packet classes;

(c) generating a packet;

(d) if the injection flag of the packet class of the generated packet is in the second state, not testing the device;

(e) if the injection flag of the packet class of the generated packet is in the first state, testing the device and setting the injection flag of the packet class of the generated packet to the second state.

6. (Original) The method of claim 5 and further comprising repeating steps (c) through (e) thereof.

EVIDENCE APPENDIX - 37 CFR § 41.37(c)(1)(ix)

None.

RELATED PROCEEDINGS APPENDIX - 37 CFR § 41.37(c)(1)(x)

There are no related proceedings.